IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

APPEAL FROM ORDER NO.971 OF 2004
IN
NOTICE OF MOTION NO.3036 OF 2004
IN
NOTICE OF MOTION NO.1058 OF 2000
IN
C.C.C. SC SUIT NO.1018 OF 2000

Mudhit Gupta, carrying on the
business in the name and style
of M/s.Vikas Hosuing P. Ltd. & Co. ... Appellants

V/s.

Smt.Phuldai Ramsanchi Yadav & ors. ... Respondents

Mr.Nusarat Shah with Eva Almeida i/b Y.N. Adhia for Appellants
Mr.Abhay Patki for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **DECEMBER 15, 2004**

P.C.:

. The appeal has been filed against an order of the trial Court dated 8.10.2004 which the appellants claim has been passed on an application made by them under Order 39 Rule 4 of Code of Civil Procedure. Order 39 Rule 4 stipulates that an order of injunction may be discharged, varied or set aside by the Court, on an application made by any party dissatisfied with such order. The proviso stipulates that if a party had knowingly made a false or misleading statement in relation to a material fact and the injunction was

granted without giving notice to the opposite party, the Court may vacate the injunction for reasons to be recorded. The second proviso clarifies that order granting an injunction which may have been passed after giving a notice to a party and an opportunity of being heard, should not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside is necessitated by the change of circumstances or the Court is satisfied that the order has caused undue hardship to that party.

2. There is no dispute that the appellant was given notice prior to passing the order on 8.12.2003 which the appellant seeks to vacate. The Motion had been served on the appellant and the appellant had not cared to file any reply. Only Defendant No.1 had filed a reply to the Motion. In these circumstances, I do not think it necessary to interfere with the order of the trial Court dated 8.10.2004. Appeal from Order dismissed.

3. In view of the Appeal from Order being disposed of, nothing survives in Civil Application No.1350 of 2004 and the same is disposed of accordingly.